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10/656,019	09/05/2003	Kurtis F. Graebe	66183-41383	8146

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EXAMINER

CONLEY, FREDRICK C

ART UNIT PAPER NUMBER

3673

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,019

Applicant(s)

GRAEBE, KURTIS F.

Examiner

Fredrick C Conley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8-9, 11-12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,596,781 to Graebe.

Claim 1 discloses a pillow comprising an inflatable cushion 70 having a top surface and an opposite bottom surface and an interior volume between the top surface and the bottom surface;

the interior volume having a sealed forward section (73a,74) between the top surface and the bottom surface;

the interior volume having a sealed rearward section (72a,72) between the top surface and the bottom surface, the rearward section being adjacent the forward section and being sealed from the forward section,

the interior volume having a sealed left side section 71 between the top surface and the bottom surface, the left side section being adjacent the forward section and the rearward section and being sealed from the forward section and the rearward section, and

the interior volume having a sealed right side section 71 between the top surface and the bottom surface, the right side section being adjacent the forward section and the rearward section and being sealed from the forward

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section and the rearward section, the right side section being on an opposite side of the interior volume from the left side section. With regards to the forward section, rearward section, left side section, and right side section being positioned and dimensioned to support the user's neck and head it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Furthermore, the forward section, rearward section, left side section, and right side sections are clearly capable of supporting a user's head and neck.

Claim 2, Graebe discloses an inflatable cushion having a top surface and an opposite bottom surface and an interior volume between the top surface and the bottom surface;

the interior volume having a sealed forward section (73a,74) between the top surface and the bottom surface:

the interior volume having a sealed rearward section (72a,72) between the top surface and the bottom surface the rearward section being adjacent the forward section and being sealed from the forward section,

the interior volume having a sealed left side section 71 between the top surface and the bottom surface the left side section being adjacent the forward section and the rearward section and being sealed from the forward section and the rearward section:

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the interior volume having a sealed right side section 71 between the top surface and the bottom surface, the right side section being adjacent the forward section and the rearward section and being sealed from the forward section and the rearward section. the right side section being on an opposite side of the interior volume from the left side section and,

the interior volume consisting essentially of the forward section, the rearward section, the left side section, and the right side section.

Claim 3, further comprising the top surface being formed with a plurality of upwardly projecting air cells.

Claim 4, Graebe discloses an inflatable cushion having a top surface and an opposite bottom surface and an interior volume between the top surface and the bottom surface;

the interior volume having a sealed forward section (73a,74) between the top surface and the bottom surface:

the interior volume having a sealed rearward section (72a,72) between the top surface and the bottom surface the rearward section being adjacent the forward section and being sealed from the forward section,

the interior volume having a sealed left side section 71 between the top surface and the bottom surface the left side section being adjacent the forward section and the rearward section and being sealed from the forward section and the rearward section:

the interior volume having a sealed right side section 71 between the top surface and the bottom surface, the right side section being adjacent the forward section and

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the rearward section and being sealed from the forward section and the rearward section. the right side section being on an opposite side of the interior volume from the left side section further comprising the left side section and the right side section of the interior volume being in fluid communication with each other (col. 9 lines 30-31).

Claim 8, further comprising the left side section and the right side section of the interior volume having equal volumes.

Claim 9, Graebe discloses an inflatable cushion having a top surface and an opposite bottom surface and an interior volume between the top surface and the bottom surface;

the interior volume having a sealed forward section (73a,74) between the top surface and the bottom surface:

the interior volume having a sealed rearward section (72a,72) between the top surface and the bottom surface the rearward section being adjacent the forward section and being sealed from the forward section,

the interior volume having a sealed left side section 71 between the top surface and the bottom surface the left side section being adjacent the forward section and the rearward section and being sealed from the forward section and the rearward section:

the interior volume having a sealed right side section 71 between the top surface and the bottom surface, the right side section being adjacent the forward section and the rearward section and being sealed from the forward section and the rearward section. the right side section being on an opposite side of the interior volume from the left side section; and,

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the rearward section of the interior volume having a volume that is larger than a volume of the forward section of the interior volume (fig. 25).

Claim 11, further comprising portions of the top surface above the left side section and above the right side section of the interior volume being elevated above a portion of the top surface above the rearward section of the interior volume (fig. 25).

Claim 12 further comprising each of the forward section, the rearward section, the left side section, and the right side section having a rectangle configuration (fig. 25).

Claim 14, Graebe discloses an inflatable cushion having a top surface and an opposite bottom surface and an interior volume between the top surface and the bottom surface;

the interior volume having a sealed forward section (73a,74) between the top surface and the bottom surface:

the interior volume having a sealed rearward section (72a,72) between the top surface and the bottom surface the rearward section being adjacent the forward section and being sealed from the forward section,

the interior volume having a sealed left side section 71 between the top surface and the bottom surface the left side section being adjacent the forward section and the rearward section and being sealed from the forward section and the rearward section:

the interior volume having a sealed right side section 71 between the top surface and the bottom surface, the right side section being adjacent the forward section and the rearward section and being sealed from the forward section and the rearward

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section. the right side section being on an opposite side of the interior volume from the left side section; and,

the top surface consisting essentially of the forward area portion, the rearward area portion, the left side area portion, and the right side area portion (Graebe '781).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,596,781 to Graebe.

Regarding claims 5-7, the embodiment in figure 25 fails to disclose valves communicating with the left side section, right side section, forward section, and rear section, however, Graebe does disclose valves (82,83) each communicating with a plurality of sections. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a plurality of valves communicating with each section in the embodiment of figure 25 in order to selectively inflate each cell.

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Claims 10, 13, and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,596,781 to Graebe in view of U.S. Pat. No. 5,052,068 to Graebe.

Regarding claim 10, Graebe '781 fails to disclose the forward section of the interior volume elevated above a portion of the top surface of the rearward section. Graebe '068 discloses a pillow having a forward section elevated above a rearward section (col. 3-4 lines 63-68 & 1-17). It would have been obvious to one having ordinary skill in the art at the time of the invention to have the forward section of Graebe '068 elevated above the rearward section in order to produce a cradle which tends to nestle the user's buttocks.

Claim 13, Graebe '781 discloses a pillow comprising:

- an inflatable cushion 70 having a top surface and an opposite bottom surface and an interior volume between the top surface and the bottom surface;

- the top surface having a forward area portion 74,

- the top surface having a rearward area portion (72,72a) adjacent the forward area portion;

- the top surface having a left side area portion (71,73) adjacent the forward area portion and the rearward area portion, the left side area portion being elevated above the rearward area portion, and

- the top surface having a right side area portion (71,73) adjacent the forward area portion and the rearward area portion, the right side area portion

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being elevated above the rearward area portion, the right side area portion being on an opposite side of the top surface from the left side area portion (fig. 25).

Graebe '781 fails to disclose the forward section of the interior volume elevated above a portion of the top surface of the rearward section. Graebe '068 discloses a pillow having a forward section elevated above a rearward section (col. 3-4 lines 63-68 & 1-17). It would have been obvious to one having ordinary skill in the art at the time of the invention to have the forward section of Graebe '068 elevated above the rearward section in order to produce a cradle which tends to nestle the user's buttocks. With regards to the forward section, rearward section, left side section, and right side section being positioned and dimensioned to support the user's neck and head it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Furthermore, the forward section, rearward section, left side section, and right side sections are clearly capable of supporting a user's head and neck.

Claim 15, further comprising the top surface being formed with a plurality of upwardly projecting cells (fig. 25)(Graebe '781).

Claim 16, further comprising the left side area portion and the right side area portion of the top surface being equally elevated above the rearward area portion of the top surface (fig. 25)(Graebe '781).

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Claim 17, further comprising the rearward area portion being larger than the forward area portion (fig. 25)(Graebe '781).

Claim 18, further comprising the left side area portion and the right side area portion being equal areas (fig. 25)(Graebe '781).

Claim 19, further comprising the left side area portion and the right side area portion each being larger than the forward area portion of the top surface (fig. 25)(Graebe '781).

Claim 20, pillow of further comprising the forward area portion, the rearward area portion, the left side area portion, and the right side area portion each having a rectangular configuration (fig. 25)(Graebe '781).

Response to Arguments

Applicant's arguments filed 6/01/04 have been fully considered but they are not persuasive.

Contrary to the Applicant's arguments Graebe does disclose sealed forward section, sealed rearward section, sealed left side section, sealed right side section. Sealed is defined as an air tight closure. Therefore, the air tight closures defined by the plurality of cells of within the forward, rearward, left side, and right side sections form the sealed forward, rearward, left side, and right side sections recited in the claims. With regards to the forward section, rearward section, left side section, and right side section being positioned and dimensioned to support the user's neck and head it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art

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apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). Furthermore, the forward section, rearward section, left side section, and right side sections are clearly capable of supporting a user's head and neck.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fredrick C Conley whose telephone number is 308-7468. The examiner can normally be reached on m-th m-fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC

A handwritten signature in black ink, appearing to read 'Teri Pham Luu', with a stylized, flowing script.

**TERI PHAM LUU
PRIMARY EXAMINER**